LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 21 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965.

No. 403.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

against

NATIONAL LABOR RELATIONS BOARD,

Respondent.

REPLY TO BRIEF IN OPPOSITION.

ABRAHAM E. FREEDMAN,
Counsel for Petitioner,
36 Seventh Avenue,
New York, New York 10011.

349 Pandick Press, Inc., 22 Thames St., New York, N. Y. 10006. U. S. A.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 403.

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,
Petitioner

against

NATIONAL LABOR RELATIONS BOARD,
Respondent

REPLY TO BRIEF IN OPPOSITION.

The Board, in its Brief in Opposition in the instant case (as it did in the Brief in Opposition in the companion case, *National Maritime Union of America* v. *NLRB*, No. 334, this Term, which arises out of the NMU picketing in Philadelphia, Houston and Galveston), has continued to advance the false proposition that the Seafarers International Union (SIU) is somehow involved in this controversy. This effort to bring in SIU, which is not supported by any evidence or by any finding by the Board, obviously is motivated by a desire to overcome the fatal deficiency in the Board's jurisdiction arising from the lack of a "labor dispute" by attempting to bring the NMU picketing within the framework of jurisdictional or representational picketing. It is a sufficient answer to this contention that the charges which were filed did not suggest that there was any jurisdictional or representational question involved nor were they filed under the sections of the Act dealing with

such controversies.[1] Moreover, since NMU and MEBA do not represent the same type of employees and do not compete for the same jobs, the instant picketing could not possibly be considered jurisdictional or representational. See *NLRB* v. *Radio Engineers Union*, 364 U. S. 573 (1961) and discussion in Reply to Brief in Opposition in *National Maritime Union of America* vs. *NLRB*, No. 334, this Term.

If SIU which, like NMU, represents unlicensed seamen, had been involved, then, conceivably, both the picketing of the *Maximus* and the instant picketing might be considered jurisdictional or representational. However, had it been SIU rather than MEBA that was picketing the *Maximus*, this dispute never would have arisen for, SIU being a union representing non-supervisory personnel, the Board would have had jurisdiction to enjoin it from illegally picketing the vessel. This distinction lies at the heart of this controversy and is of the utmost importance. Cambridge Carriers, Inc., owner of the *Maximus*, in an effort to stop the MEBA picketing, filed unfair labor practice charges against MEBA. These charges were dismissed by the Board on the ground that it lacked jurisdiction over MEBA as it was a union representing supervisory personnel.[2] However, if SIU had been involved in any way, as the Board now contends, the alleged supervisory status would not have been a defense, and the Board would have had jurisdiction to issue a complaint. Thus, the Board's current effort to frame the NMU picketing in terms of a

---

[1] Jurisdictional and representational disputes are treated separately in Sections 8(b)(4)(i)(ii)(C) and (D), 29 U. S. C. A. 158(b)(4)(i)(ii)(C) and (D), and Section 8(b)(7), 29 U. S. C. A. 158(b)(7), of the Act.

[2] Section 2(3), 29 U. S. C. A. 2(3), excludes from the definition of "employee" as used in the Act "any individual employed as a supervisor."

jurisdictional or representational dispute with SIU flies in the face of its prior determination that it lacked jurisdiction to stop the picketing of the *Maximus*. It is the Board's inability to protect a union which is the victim of illegal picketing by a supervisors union which necessitated the NMU picketing in this case, and it is precisely because of this factor—that the dispute was with another union rather than with a primary employer—that such picketing is not proscribed by Section 8(b)(4)(i)(ii)(B) of the Act.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioner.